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SUBJECT: POLAND - LACK OF VISION IN FIGHTING CORRUPTION?

REF: WARSAW 710

Classified By: Political Counselor Dan Sainz for reasons
1.4 (b) and (d).

¶1. (C) SUMMARY. Since taking office in November 2007, the Tusk Government has been faulted by the opposition, NGOs, and the media for not making the fight against corruption a top priority. Recent surveys suggest Poles are as concerned as ever about corruption, despite notable progress over the past decade. GOP strategists, initially concerned about voter fatigue with the previous government's "law and justice" approach to corruption, instead focused on legislative fixes and small measures to put the GOP's house in order before taking on public corruption writ large. Despite the public outcry about the GOP's "do-nothing" approach, PM Tusk has not changed tack. By most measures, Poland has sufficient legal, organizational, and administrative tools to fight corruption. The problem lies in their effectiveness, as evidenced by Polish prosecutors' inability thus far to convict the mayors of Szczecin and Sopot, despite strong evidence against them. While Tusk and his anti-corruption czar Julia Pitera clearly appreciate the hidden costs of corruption, the current GOP's aversion to the "hysterical," moralistic approach of its predecessor suggests that progress on this front will continue to be gradual. END SUMMARY.

SURVEY SAYS

¶2. (SBU) Despite progress over the past decade -- e.g., a sharp drop in police corruption -- local and international polling data continue to indicate that Poles perceive corruption as a problem. In 2008, Transparency International's (TI) Corruption Perceptions Index (CPI), which measures expert opinions -- e.g., risk agencies and country analysts -- on public sector corruption, Poland ranked 58 out of 180 countries. Of the 27 EU member states, only Bulgaria and Romania ranked lower. The CPI identified the most serious problems in the civil service, political parties, the private sector, and the judiciary.

¶3. (SBU) In an April 2009 public opinion poll, 89% of respondents stated corruption in Poland is a serious problem. Respondents said the areas most affected by corruption are electoral politics and the health care sector. The judicial system was considered the most corrupt by 28%, followed by local and regional governments (27%), the central government (27%), police (16%), state-owned enterprises (14% percent), and private business (10%). Approximately 75% were convinced that high-ranking public officials and politicians either arrange government contracts for companies owned by family and friends or, in formulating policy, yield to pressure from influential individuals and businesses. According to TI's Global Corruption Barometer, which measures the general public's perceptions, only 21% consider Poland's anti-corruption institutions effective. While 52% of respondents in the April 2009 poll said there is political will to fight corruption, 35% said there is not. (NB: These numbers roughly reflect, respectively, levels of public

support for the Government and for opposition parties.)

MEDIA CAMPAIGNS AND SLOPPY LEGISLATION

14. (C) According to Grazyna Kopinska, Director of the Batory Foundation's Anti-Corruption Program, despite PM Tusk's 2007 pledge to do so, Poland has yet to strike a balance between prevention and law enforcement measures. Instead, successive Polish governments have swung from one end of the pendulum to the other. Tusk's government has failed to develop a strategic vision, instead offering "sloppy" legislation and one media campaign after another, Kopinska said. She suggested the Tusk Government had actually reverted to a focus on prevention -- similar to the approach taken by the Democratic Left Alliance (SLD) in 2002-2005 -- in part because of voter fatigue with the PiS Government's (2005-2007) extensive use of criminal investigations and police activity to fight corruption. PM Tusk's anti-corruption czar, Julia Pitera, told us that PiS's "hysteria" about corruption did not help; it only fed conspiracy theories. Instead, the Tusk Government's aim is "not to moralize, but to show corruption's real costs" as a means to promote effective, transparent governance, Pitera said.

STRONG INSTITUTIONS, BUT CONVICTIONS ELUSIVE

15. (SBU) Public concerns about corruption and government inaction notwithstanding, Poland has sufficiently strong institutions and mechanisms to fight corruption, according to the Global Integrity Report. The report, which notes that Poland topped the Global Integrity Index in 2008, argues that

WARSAW 00000860 002 OF 004

the gap between negative public perceptions of corruption and the report's positive assessment indicate "the presence of a dynamic civil society and media which are capable of bringing issues of good governance into the public spotlight." The report goes on to state "the prevalence of corruption scandals suggests that watchdogs in the media civil society, the justice sector, and independent ombudsmen or anticorruption agencies have the authority and political space to do their jobs."

16. (C) TI's country director Stan Cichocki agreed with this assessment, stating that the Central Anti-Corruption Office (CBA) -- created in 2006 as a key component of the PiS Government's anti-corruption drive -- and subsequent criminal investigations had raised the profile of corruption and, as a result, caused Poland's CPI ranking to suffer. Other prominent private sector consultants generally agreed. One pointed out that, in contrast to the years before 2005, today it is "nearly unthinkable" that a minister would take a bribe. He argued the most significant legacy of the 2005-2007 PiS Government was the establishment of the CBA -- i.e., a place where whistleblowers and the general public can report incidents of corruption.

17. (C) Arguably, Poland's biggest weakness is its inefficient -- and woefully backlogged -- criminal justice system, itself subject to suspicions of corruption (reftel). For example, despite high-profile media coverage and clear evidence that he received an apartment in exchange for approving a construction permit, Szczecin's mayor remains in office pending the outcome of his trial. Likewise, the mayor of Sopot, who had eight criminal charges filed against him (seven corruption-related), survived a public referendum on his recall, despite the fact that PM Tusk, a member of the same political party, publicly called for his resignation. His trial is also ongoing. Although the PiS government was faulted for highly publicized arrests of corruption suspects that rarely led to convictions, defenders suggest that "trial by press" is sometimes the only sanction available when the court system fails to convict.

NEPOTISM / CONFLICT OF INTEREST

18. (SBU) Although 72% of respondents in the April 2009 poll still believe top-level government officials accept bribes, our NGO and business contacts suggest the practice is less prevalent than it was a decade ago, primarily because of fears of criminal prosecution. Instead, contacts suggested that Poland's biggest corruption-related challenges are with nepotism and conflict of interest. A flurry of high-profile allegations in the first half of 2009 seems to confirm the prevalence of nepotism and conflict of interest. In January, Defense Minister Klich was accused by the opposition of appointing party peers from his Krakow constituency to influential positions at state defense agencies. In February, newly appointed Justice Minister Czumak was criticized for "forgetting" to resign as a member of the board of directors of his son's company and failing to disclose that he had hired his son as his social assistant.

19. (C) Deputy Prime Minister / Economy Minister Pawlak and his Polish People's Party (PSL) do not even accept the premise that nepotism is to be avoided; they defend government officials' hiring of qualified family members. In addition, Pawlak was accused in March of conflict of interest for failing to resign as head of Poland's Volunteer Fire Brigade, and for steering contracts to friends and family which did not go through a competitive bid process. PM Tusk was criticized for letting Pawlak, who heads the junior coalition partner PSL, off with just a slap on the wrist. Tusk said Pawlak had not violated any law and was not subject to the party regulations of Tusk's governing Civic Platform (PO). When allegations broke shortly thereafter that a company co-owned by Senator Tomasz Misiak (PO) had been awarded a government contract without a tender on the basis of legislative amendments adopted by the Senate committee Misiak chaired, Tusk stripped the Senator of his committee chairman job and kicked him out of the party. (NB: Despite his government's quiet approach on corruption, as head of PO, Tusk has taken a zero-tolerance stance, quickly severing ties with party members accused of conflict of interest, including the mayors of Sopot and Szczecin.)

10. (C) In response to the rash of allegations, PM Tusk's anti-corruption czar Julia Pitera spent months drafting new legislation on conflict of interest, focused primarily on strengthening financial disclosure requirements. Poland's current regulations "facilitate deceit" because they do not contain penalties for lying and do not require politicians to list the value of assets, only their sale or purchase price, Pitera told us. Media outlets, including some of Poland's

WARSAW 00000860 003 OF 004

leading investigative journalists, joked that Pitera's draft bill was so restrictive that only an unemployed person without property or a family would be eligible to hold high-level public office. The bill was similarly panned by the opposition, private business, judges, and legal experts. Pitera complained that she had been forced to accept input from a host of ministries that often served to water down the bill's provisions. The PM's Chancellery has effectively shelved the legislation, though technically it is still on a list of bills waiting to be submitted to the Sejm. (NB: In the wake of the Misiak scandal, PO Parliamentary Caucus Chair Zbigniew Chlebowski expressed interest in U.S. congressional approaches to fighting conflict of interest.)

WAR ON CORRUPTION, OR POLITICAL WEAPON?

11. (C) Pitera's lack of success on conflict of interest legislation marks her second defeat since becoming anti-corruption czar in late 2007. Her first order of business, dismantling the controversial CBA, reportedly met with stiff resistance from PM Tusk's media strategists, who feared that disbanding an anti-corruption body would give the opposition PiS too much political fodder. Despite safeguards designed to ensure CBA's political independence, the previous PiS Government was frequently accused of using CBA to

marginalize and discredit political rivals. In fact, critics within the opposition SLD filed a petition with the Constitutional Tribunal calling CBA an "institution that endangers democracy." While the Tribunal's June ruling on the petition calls for minor changes to the CBA's governing legislation, it is unlikely to impact CBA's operations. In a recent meeting with the Embassy, CBA director Mariusz Kaminski laughed off the criticism, stating that "attacks" are a sign CBA is doing its job.

¶12. (C) In response to questions about CBA's independence and its effectiveness, Kaminski cited a 2006-2007 investigation that resulted in the dismissal of then-Deputy PM Andrzej Lepper (Self-Defense, SO) and, subsequently, the collapse of the PiS Government and a PO victory in the 2007 early elections. (Comment: Kaminski's claims are frankly disingenuous, given PiS leaders' subsequent private statements taking credit for "destroying" SO.) Kaminski also cited recent media analysis suggesting CBA's investigations into corruption in the health care sector had been effective. Kaminski faulted the Tusk Government's focus on prevention, arguing that PO is mainly interested in creating a shield for government officials, rather than undertaking high-profile investigations and handing down strict punishment. Because of CBA's association with PiS, however, Tusk uses the CBA as a "prophylaxis" within his own cabinet, Kaminski claimed.

ANTI-CORRUPTION CZAR IN THE SHADOWS

¶13. (C) Once a media firebrand who used her position as TI's country director from 2001-2005 to rail against corruption, Pitera is now the frequent subject of NGO and media criticism. One recent opinion poll indicated the public had greater confidence in CBA than in Pitera. In a meeting with the Embassy, Pitera seemed exhausted -- she conceded that despite PM Tusk's political will to fight corruption, not everyone in the GOP shares that vision. Her office has no enforcement powers and has to struggle with resistance from a deeply entrenched bureaucracy. Because the GOP's system of internal controls is fragmented, fighting government corruption is more difficult than fighting organized crime, Pitera said. Initially ambitious about strengthening government internal controls across the board, Pitera quickly realized she had to start small, and has therefore concentrated on auditing the Prime Minister's Chancellery's finances and hiring practices. Her lack of success even in this narrow field has drawn ridicule from critics and the media -- e.g., after Pitera established new rules on Chancellery officials' use of government credit cards, most stopped using the cards and now rely exclusively on cash, which is harder to track.

CIVIL SOCIETY - ENGAGED, BUT NOT UNITED

¶14. (C) While a large number of NGOs, investigative journalists, academics, and think tanks are engaged in fighting corruption, the many actors rarely cooperate and hardly ever speak with one voice. Once outspoken in highlighting cases of corruption, TI Poland is today staffed by a skeleton crew of volunteers and virtually silent in the media. Since the departure of the media-savvy Pitera, who left TI after being elected to parliament in 2005, the organization has struggled. More recently, media have accused TI Poland of engaging in unethical political practices, including lobbying on behalf of donors, issuing 'morality certificates' to companies of questionable repute,

WARSAW 00000860 004 OF 004

and refusing to disclose financial statements and donors' names. TI's current country director Cichocki denied the charges, attributing them to politically motivated, paid journalism. He went on to say that Pitera left the organization in financial disarray in 2005 despite the media attention she had attracted, and then took most of TI's staff with her to parliament. Obviously bitter, Cichocki accused Pitera of using TI for her own political advancement, charges

that others have echoed.

BUSINESS COMMUNITY NOT OVERLY CONCERNED

¶15. (C) While the business community acknowledges that corruption is a problem, particularly in the real estate and construction sectors, only 16% percent of companies in Poland perceive corruption as a major threat to business, compared with 25% in Western Europe, according to a 2008 Ernst and Young report. Although there are "spectacular" cases of corruption in the construction sector, they are generally attributable to systemic problems worldwide, not Poland-specific, one AmCham contact told us. For the most part, AmCham companies are "relieved" that the current Government, unlike the prior PiS government, does not regularly arrest business leaders on Friday afternoon to dominate the weekend news cycle, even when conviction prospects are remote. Pitera and CBA's Kaminski complained that because oversight of real estate and construction services falls to municipal and regional governments, local officials generally feel they are immune from prosecution -- an assumption borne out by ineffective efforts to prosecute the mayors of Szczecin and Sopot.

COMMENT

¶16. (C) Despite the Tusk Government's lack of strategic vision and active leadership on fighting corruption, there are grounds for optimism. The GOP's interest in attracting foreign investment, promoting Poland's rapid integration into the EU, and projecting itself as a role model for EU aspirants in Eastern Europe offers hope for continued, albeit gradual, progress. Tusk, who takes a "bottom-line" approach on most issues, clearly understands the hidden costs of corruption. While Pitera's warning that "hysteria does not help" might seem to some a weak excuse, her words clearly reflect Tusk's preference for -- and confidence in -- quiet, evolutionary change on this and other fronts.

QUANRUD